

FILED

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

Ernie Martinez #54022-051
FCI Phoenix
37910 N. 45th Ave.
Phoenix, AZ 85086

MAY - 5 2016

Movant in pro se

MATTHEW J. DYKMAN

CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

16 CV 388 JB/SMV

Case No. 1:09-CR-2619 JB

v.

MOTION FOR APPOINTMENT
OF COUNSEL

ERNIE MARTINEZ

COMES NOW, defendant, Earnie Martinez, pro se, and moves this Honorable Court for an ORDER appointment of counsel to represent hm in this case.

In support of this motion, Defendant states:

1. The U.S. Supreme Court in Johnson v. United States 135 S. Ct. 2251 (2015), declared the residual clause of the Armed Career Criminal Act (ACCA) unconstitutionally vague. The residual clause is a catchall section of the ACCA that treats a variety of different offenses as "crimes of violence". The United States used defendant's prior convictions as crimes of ciolence which are no longer considered crimes of violence pursuant to Johnson.

2. Because the residual clause is unconstitutional, the defendant who was sentenced as a Career Offender argues that his sentence is unconstitutional under Johnson.

3. The wording of the ACCA is identical to the "residual clause" in the Career Offender Guidelines so the defendant also challenges his sentence based on this factor and the Johnson case.

4. Defendant's imprisonment greatly limits his ability to litigate. These issues involved in this case are complex and will require significant research and investigation. The defendant has limited access to the law library and limited knowledge of the law.

5. Counsel would better enable defendant to present a Johnson claim to the court either in this matter or a 28 U.S.C. 2255 for relief.

6. Defendant's deadline to file is of critical importance that requires the courts immediate attention in order to protect the defendant's rights.

WHEREFORE, defendant requests that this Honorable Court appointment a member of the Public Defender's Office, or CJA pool for relief on this unconstitutional sentence under the ACCA as declared by the Johnson case above, which defendant is currently serving.

Respectfully Submitted,


Ernie Martinez, pro se

CERTIFICATE OF SERVICE

I, Ernie Martinez, hereby declare under penalty of perjury, that I have mailed a true and correct copy of the foregoing motion to the following by first class mail:

United States Attorney's Office

United States Courthouse
333 Lomas Blvd. N.W., Ste. 270
Albuquerque, New Mexico 87102


Respectfully Submitted,

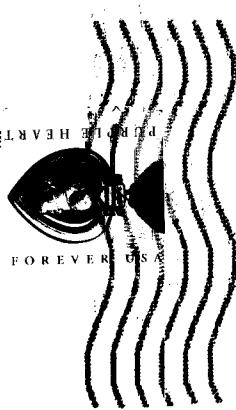
ERNIE MARTINEZ #54022-051
Phoenix F.C.I.
37910 N 45th. Ave
Phoenix AZ. 85084

cc REEDEN
At Albuquerque NM

MAY 05 2016

MATTHEW J. DYKMAN

Georg Federal Correctional Institution
Phoenix, Arizona
Inmate Correspondence



ALBUQUERQUE, NEW MEXICO
87102

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